CPMG / KA / BG-GPO/13/2003-2005

ಸುವರ್ಣ ಕರ್ನಾಟಕ 2006



ಕರ್ನಾಟಕ ರಾಜ್ಯಪತ್ರ

ಅಧಿಕೃತವಾಗಿ ಪ್ರಕಟಿಸಲಾದುದು

ಸಂಪುಟ ೧೪೦	ಬೆಂಗಳೂರು, ಗುರುವಾರ, ಆಗಸ್ಟ್ ೨೫, ೨೦೦೫ (ಭಾದ್ರಪದ ೩, ಶಕ ವರ್ಷ ೧೯೨೭)	ಸಂಚಿಕೆ ೩೪

ಭಾಗ - ೪

ರಾಜ್ಯದ ವಿಧೇಯಕಗಳ ಮತ್ತು ಅವುಗಳ ಮೇಲೆ ಪರಿಶೀಲನಾ ಸಮಿತಿಯ ವರದಿಗಳು, ರಾಜ್ಯದ ಅಧಿನಿಯಮಗಳು ಮತ್ತು ಅಧ್ಯಾದೇಶಗಳು, ಕೇಂದ್ರದ ಮತ್ತು ರಾಜ್ಯದ ಶಾಸನಗಳ ಮೇರೆಗೆ ರಾಜ್ಯ ಸರ್ಕಾರವು ಹೊರಡಿಸಿದ ಸಾಮಾನ್ಯ ಶಾಸನಬದ್ಧ ನಿಯಮಗಳು ಮತ್ತು ರಾಜ್ಯಾಂಗದ ಮೇರೆಗೆ ರಾಜ್ಯಪಾಲರು ಮಾಡಿದ ನಿಯಮಗಳು, ಹಾಗೂ ಕರ್ನಾಟಕ ಉಚ್ಚ ನ್ಯಾಯಾಲಯವು ಮಾಡಿದ ನಿಯಮಗಳು.

ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi-110 001
NOTIFICATION
Dated 25th July, 2005 3 Sravana, 1927 (Saka)

No. 82/KT-LA/(1/2003)/2005:- In Pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement / Order of the High Court of Karnataka Bangalore, dated 22.7.2004 in Election Petition No. 1 of 2003.

IN THE HIGH COURT OF KARNATAKA AT BANGALORE
Dated this the 22nd day of July 2004
Before
THE HON'BLE MR. JUSTICE K.L. MANJUNATH
ELECTION PETITION No. 1 OF 2003

BETWEEN

Sri Bashiruddin Halhipparga S/o
M. Yusuf Hal Hipparga, Age: 50 years, Occ: Agril., r/o
H. No. 4-2-47/1, Noor Khan Taleem,
Bidar Taluk & District.

PETITIONER

(By Sri V.T. Rayaraddi, Smt Akkamahadevi Hiremath & Sri N.B. Patil, Advs.)

AND

1. Rajashekhar Basavaraj Patil,
age: 36, Occ: Agril., r/o
Near Bus Stand, Humnabad, Humnabad Taluk, Bidar District.
2. Mirajuddin N. Patel S/o
Nizamuddin Patel,
Age: 45, Occ: Agril. & Ex-Minister,
r/o Huchakanahalli Village, Bidar Taluk & District.

3. Subhash Gurulingappa Kallur,
age: 45 years, Occ: Agril., r/o
Shanti Nivas, H. No. 22-1478,
Near Bus Stand, Humnabad,
Humnabad Taluk, Bidar District.
4. Subhas Ramachander,
Age: 52, Occ: Agril., r/o
H. No. 1-130, Indiranagar, Humnabad, Bidar District.
5. Ashfouddin Sardar Miyan,
Age: 60, Occ: Agril., r/o H. No. 11-224,
Brahmapur Lalageri, Gulbarga, Gulbarga District.
6. Channabasavananda Swamiji
Mallayya Dakulgi, Aged: 30,
Occ. Swamiji, r/o Khatakchincholi,
Bhalki Taluk, Bidar District.
7. M.G. Dayanand S/o
Not known, age: 55, Occ: Agril., r/o
Ranjolkheni Village, Bidar Taluk & District.
8. Narasappa Iachappa Muthangi,
Age: 65 years, Occ: Agril., r/o
Palakpalli, Post: Changler,
Humnabad Taluk, Bidar District.
9. Bhaskar Babu Patarpalli s/o
not known, age: 42, Occ: Advocate,
r/o Patarapalli Village, Bidar Taluk & District.
10. Moulana Sab Firid Sab,
Age: 60, Occ: Business, r/o H. No. 7-830,
Naya Mohalla, Gulbarga, Gulbarga District. Respondents

(By Sri L.M. Chidanandaiah & Sri Jayaprakash Shetty, Advs. For R-1;
Sri R.S. Siddapurkar, Adv. For R-10;
R-2, 3 & 9 served;
R-4-8 service held sufficient.)

This Election Petition filed U/s 81 of the Representation of People Act, 1951 by the petitioner Candidate at 2003 bye-Election to the Karnataka Legislative Assembly from No. 5, Humnabad Assembly Constituency, Humnabad, held on 1.3.2003 through his Advocate Sri V.T. Rayaraddi, Praying to declare the election of Returned Candidate dtd: 1.3.2003 namely 6th respondent as Member of Karnataka Legislative Assembly as null and void on account improper acceptance and rejection of the nomination paper and in violation of the Election code of Conduct issued by the 1st respondent for No. 5, Humnabad Asembly Constituency, Humnabad & c.,

This Election Petition coming on for hearing this day, the Court made the following:-

ORDER ON THE MAINTAINABILITY OF THE ELECTION PETITION

In the general election held in the month of September 1999 to No. 5 Humnabad Assembly Constituency, the 3rd respondent Subhash Gurulingappa Kallur, was declared as an elected candidate. The first respondent - Rajashekar Basavaraj Patil filed an election dispute in E.P. No. 13/99 before this Court. The said petition came to be dismissed on merits. Being aggrieved by the dismissal of the election petition, the 1st respondent filed a civil appeal before the Hon. Supreme Court of India in Civil Appeal No. 5667/01 which appeal came to be allowed and the election of the 3rd respondent was set aside; on the ground that he had incurred disqualification to contest the election under section 9A of the Representation of the People Act, 1951. Thereafter a notification was issued on 22.1.2003 by the Government of

Karnataka, notifying the calender of events for By-Election to No. 5, Humnabad Assembly Constituency. The dates of events of the said election are as hereunder:

1.	Issue of Notification by the Election Commission of India Under section 150, 30 & 56 of the Representation of People Act 1951.	31.01.2003 (Friday)
2.	Last date for making Nominations.	07.02.2003 (Friday)
3.	Date for the Scrutiny of Nominations.	08.02.2003 (Saturday)
4.	Last date for the withdrawal of candidatures.	10.02.2003 (Monday)
5.	Date of Poll	26.02.2003 (Wednesday)
6.	Date of Counting of Votes	01.03.2003 (Saturday)
7.	Date before which election shall be completed.	07.03.2003 (Friday)

2. One Mallikarjuna was appointed as a Returning Officer who was previously working as the Assistant Commissioner at Basavakalyan Sub-Division upto 28-10-2002. Several persons filed nominations in the said election. The Returning officer rejected the nomination of one Ashok S/o Masoodappa as a substitute candidate for Bharatiya Janatha Party. The Returning officer also accepted the nomination of one Ashfoddin who is the 5th respondent in the present Petition.

3. Being aggrieved by the election results, declaring the 1st respondent as an elected candidate, the petitioner filed the present election petition under section 81 of the Representation of the People Act 1951 on three grounds.

4. According to the petitioner, Returning Officer has committed an error in rejecting the nomination of Ashok S/o Masoodappa as substitute candidate for the Bharatiya Janatha Party. According to him, it is a case of improper rejection of nomination it is also has case that the Returning Officer has committed an error in accepting the nomination of the 5th respondent. According to him, it is a case of improper acceptance of the nomination. It is also pleaded in the petition that contrary to the Model code of conduct for the guidance of political parties and the candidates the than Chief Minister and several Ministers during the period of election campaign in the Humnabad Constituency held several public meeting and assured several reliefs to the valuable voters to make the voters to exercise their franchise in favour of the 1st respondent. Therefore, on these grounds, the election petition has been filed by the petitioner.

5. The 1st respondent who is the contesting respondent has filed the detailed reply to the election petition. According to him, the Returning Officer has not committed any error either in rejecting the nomination of Ashok S/o Masoodappa or in accepting the nomination of the 5th respondent. It is also the case of the 1st respondent that with his knowledge or consent either the Chief Minister or any other Ministers or political leaders of Congress-I party have assured the voters of Humnabad Constituency influencing the voters to exercise their franchise in favour of the petitioner. Alternatively, it is also contended that the 1st respondent has not played any role in the alleged assurance said to have been given by some of the party leaders. It is also contended that even if there are any violation of code of conduct the same cannot be considered as a ground to set aside the election of the 1st respondent. According to the 1st respondent, if the party in power has violated the model code of conduct it was open for the petitioner to lodge the complaint before the Election Commission of India and it was for the Election Commission of India to take appropriate action against the persons who were indulged in such activities. Therefore, he requests this Court to dismiss the election petition.

6. The 1st respondent also filed an application to dismiss the election petition on the ground that the petition filed by the petitioner was not maintainable as it does not attract any of the provisions of Section 100 of the Representation of the People Act, 1951.

7. This court after hearing the learned counsel for the petitioner and respondents and based on the Memo filed by the learned counsel appearing for the petitioner that the petitioner has not filed the election petition on the ground of corrupt practices dismissed the application of the 1st respondent and held that the election petition filed by the petitioner is maintainable and has to be adjudicated on the allegations made in the election petition.

8. Based on the pleadings of the parties, the Court also framed issues. Thereafter the petitioner was examined as P.W.1 and the also examined two more witnesses, namely, Ashok Masoodappa whose nomination was rejected as P.W.2 and one Revanappa a resident of Chitaguppa town was examined as P.W.2. Thereafter the case was set down for the further evidence of the petitioner. In the meanwhile, due to dissolution of the Karnataka Assembly, the 1st respondent filed an application requesting this Court to dismiss the election petition as having become infructuous and requested the Court to hold that no living issues would survive for consideration of this Court in view of the subsequent developments. The petitioner has also filed objections to the said application. Therefore, in this background, this application is heard even through the evidence has been recorded in part on behalf of the petitioner.

9. It is not in dispute that due to dissolution of the Assembly and holding of fresh elections to the Karnataka Assembly, the 1st respondent cannot act as an elected representative of the Humnabad Assembly Constituency. In view of the Memo that petitioner is not alleging the grounds of corrupt practices against the 1st respondent, no finding can be given by this Court on the question of corrupt practices. Therefore, in this background, this Court is of the opinion that the recording of further evidence and giving findings on merits of the election petition is only a question of academic interest, since the petitioner has filed this petition on the ground of improper rejection of nomination of Ashok Masoodappa and improper acceptance of the nomination of 5th respondent and violation of model code of conduct.

10. The Supreme Court in LOKNATH PADHAN Vs. BIRENDRA KUMAR SAHU reported in (1974) 1 SUPREME COURT CASES 526 has held as hereunder:

> "Legislative Assembly being dissolved, it has become academic to consider whether on the date when the nomination was filed, the respondent (the winning candidate) was disqualified under Section 9A. Even if it is found that he was so disqualified, it would have no practical consequence, because the invalidation of his election after the dissolution of the Legislative Assembly would be meaningless and ineffectual. It would not hurt him. The disqualification would only mean that he was not entitled to contest the election on the date when he filed his nomination. It would have no consequences operating in future. It is possible that the respondent had a subsisting contract with the Government at the date of nomination, but that contract may not be subsisting now. The finding that the respondent was disqualified would be based on the facts existing at the date of nomination and it would have no relevance so far as the position at a future point of time may be concerned, and therefore, in view of the dissolution of the Legislative Assembly, it would have no practical interest for either of the parties. Neither would it benefit the appellant (the defeated candidate) nor would it affect the respondent in any practical sense and it would be wholly academic to consider whether the respondent was disqualified on the date of nomination."

11. Sri Rayaraddi, appearing for the petitioner contends that though the petitioner is not entitled for the relief in the election petition since the petitioner has made allegation of violation of model code of conduct, the petition survives for consideration and that Court has to given its finding on the effect of violation of model code of conduct by the party in rule.

12. The model code of conduct for the guidance of political parties and candidates has been issued by the Election Commission of India. The said guidance do not say what would be the consequence if any of the guidance is violated by the political parties and the candidates. Though such guidance has been issued by the Election Commission of India, there is no corresponding amendment to Section 100 of the Representation of the People Act.

13. If an election has to be declared as void, a party has to prove the grounds available to him under section 100 of the Representation of the People Act, 1951. Section 100 of the Representation of People Act reads as hereunder:-

"100 Grounds for declaring election to be void,- (1) Subject to the provisions of sub-section (2) if (the High Court) is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution of this Act (Or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate (by an agent other than his election agent), or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

(the High Court) shall declare the election of the returned candidate to be void).

(2) ...."

14. From the provisions of section 100 of the Act, it is clear to me that even if there are violation of code of conduct either by the political party or by its candidate such violations can only be brought to the notice of the Election Commission of India to initiate appropriate action against such party or candidate. But the same cannot be a ground to set aside the election of a Returning candidate as void, since such a question cannot be adjudicated by the Court in view of the provisions of section 100 of the Representation of People Act.

15. In the instant case, there are no allegations of violation of model code of conduct against the 1st respondent. It is the specific case of the petitioner that the then Hon. Chief Minister and few Hon. Ministers had assured to convert the Chitaguppa town as a Taluk Headquarters and to give certain reliefs to the employees of Mahatma Gandhi Sahakara Sakhare Karkhane, Bhalki Taluk and to provide the status of Schedule Tribes to two communities by name, Gonda and Rajgonda. Therefore, it is clear that the 1st respondent, the Returned candidate has not violated the model code of conduct issued by the Election Commission of India. Even otherwise, this Court cannot consider the effect of the violation of model code of conduct by any political party, in view of section 100 of the Representation of People Act, 1951. Therefore, this Court is of the opinion that even if the Returning Officer has improperly rejected the nomination of Ashok s/o Masoodappa and that the nomination of 5th respondent was improperly accepted 1st respondent, this Court at best can hold that the said two aspect will have no bearing on the election petition in view of the dissolution of the Assembly subsequently. At best these two points can be considered only in the academic interest and no substantial question of law arises for consideration of this Court to set aside the election of the Returning candidate.

16. Accordingly, the election petition is dismissed as having become infructuous.

Sd/-
Judge

"Copy"
Sd/-
Deputy Registrar,
High Court of Karnataka, Bangalore.

By Order,
TAPAS KUMAR
Secretary,
Election Commission of India.

P.R. 166

ELECTION COMMISSION OF INDIA

Nirvachan Sadan, Ashoka Road, New Delhi-110 001

NOTIFICATION

Dated 27th July, 2005 5 Sravana, 1927 (Saka)

No. 82/KT-LA/(15/2004)/2005:- In Pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the Judgement / Order of the High Court of Karnataka Bangalore dated 14.2.2005 in Election Petition No. 15 of 2004.

IN THE HIGH COURT OF KARNATAKA, BANGALORE

Dated this the 14th day of February 2005

Before

THE HON'BLE MR. JUSTICE K.L. MANJUNATH

E.P. No. 15 OF 2004

BETWEEN

SUBHAN KHAN
40 YRS, S/O UMAR KHAN
OCC EDITOR VAJRAVANI
R/O 2nd CROSS, K T J NAGAR DAVANGERE TALUK,
DAVANAGERE DIST. **PETITIONER**
(By Sri RAHAMATHULLA KOTHWAL, ADVOCATE)

AND

1. S. SHIVA SHANKARAPPA BAKKESHA
MAJOR R/O NO 2633/1, 7 MAIN
2 CROSS, MCC B BLOCK, DAVANGERE.
2. YASHAWANTHA RAO
D. NO. 273/2, TAPARGALLI SHIVAJI NAGAR, DAVANGERE.
3. YAJAMAN MOTHI VEERANNA
D NO 2645/3, I MAIN, 2nd CROSS, MCC B BLOCK, DAVANGERE.
4. SHAMANUR GEETHA
NO 2844/1, I MAIN, 2ND CROSS, MCC B BLOCK, DAVANGERE.
5. M C REKHA
D NO. 521, NIJALINGAPPA EXTENSION, DAVANGERE. **RESPONDENTS**

By Sri BASAVAPRABHU S PATIL &
SRI VENKATESH D. PASTAY, ADV. FOR R-1, R-2 TO R-5 SERVED)

Election petition filed u/s 81 of the Representation of People Act, 1951, praying to declare that the declaration that the election of the first respondent is void on the ground of violation of Section 100 (a) (b) (c) (d) & (2) of R.P. Act 1951 in respect of No.41, Davanagere Legislative Assembly Constituency and etc.

Election petition coming on for trial this day, the Court made the following:-

ORDER

Petitioner is Challenging the election of the 1st respondent who has been declared as an elected candidate from 41, Davanagere Assembly Constituency, declared on 13.5.2004. The present petition is filed challenging the validity of the declaration of results of 1st respondent under Section 100(a) (b)(c)(d) & (2) of the Representation of the People Act, 1951 ('Act' for short).

2, According to the petitioner, he filed his nomination for the Karnataka Assembly from 41, Davanagere Assembly Constituency. Annexure-C is the nomination filed by the petitioner. As per

Annexure-E dated 2.4.2004, the nomination of the petitioner was rejected by the Returning officer contending that the petitioner who has claimed as an official candidate of All India Congress, has failed to furnish Forms 'A' and 'E'. In order to consider him as an independent candidate his nomination had or not contained the signatures of 10 proposers and that the affidavit form is on a plain paper and not on the required stamp paper. On these grounds, the nomination of the petitioner was rejected.

3. The petitioner further contends that the 1st respondent has spent more than 5 crores for the whole election and spent more than 5.00 lakhs per booth for around 40 booths everyday. The Returning Officer and the Deputy Commissioner, Davanagere were silent spectators and did not take action against the 1st respondent even though he spent more than 5 crores in the election. It is also his case that the 1st respondent distributed intoxicating liquors to the voters of the above constituency in violation of Section 135(C) of the Act. The present petition is filed by the petitioner contending that the rejection of the nomination of the petitioner was not in accordance with law and due to improper rejection of the nomination, the petitioner's prospectus to become the elected candidate from No. 41, Davanagere Assembly Constituency has been taken away and the election of the 1st respondent has to be set aside, due to corrupt practice, practised by the 1st respondent. Therefore, he has presented this petition to declare the election of the 1st respondent as void on the ground that his election is in violation of section 100 of the Act and requested the court to direct re-election and to re-pole to No.41 Davanagere Legislative Assembly Constituency.

4. Respondent No.1 has filed a detailed written statement denying the allegations made in the petition. According to him, All India Congress Party did not sponsor the petitioner as its candidate and that the petitioner did not produce Forms 'A' and 'B'. The Returning Officer, also could not have treated the petitioner as an independent candidate, as the nomination papers of the petitioner had not contained the signatures of 10 proposers and that the affidavit which was required to be sworn to on the stamp paper was on the plain paper. Therefore, he contends that the rejection of the petitioner's nomination was correct. The allegation that the petitioner is an editor of weekly 'Vajravani' and that he is a popular figure in Davanagere and he had wide support from all sections of the society are all false. According to him, a case is registered against the petitioner in Cr.No. 172/1996 for the offences said to have been committed under Sections 342, 323, 506 of IPC and a charge sheet is also filed in C.C.176/97. It is also his case that the petitioner has been Convicted for the said offences in the above case and he was sentenced to imprisonment for one year and also a fine of Rs.2,000/- by the II Addl.Judicial Magistrate First Class, Davanagere. It is also his case that the petitioner is also an accused for an offence U/s.420 of IPC in Cr.No.177/1996, which is registered as C.C.35/98, which is pending before the Magistrate Court at Davanagere. He further contends that the petitioner is also an accused in C.C.467/99 on the file of II Addl. Judicial Magistrate First Class, Davanagere for the offences said to have been committed under Sections 468, 471 and 472 of IPC and Section 51(A) of Arms Act, 1952. He further contends that a case is also registered against the petitioner in Cr.N.386/1996. He has produced the charge sheet in respect of the cases referred to, along with the written statement. He has also denied the allegations that he has spent Rs. 5 crores and distributed liquors in the election. It is his contention that whatever the amount spent by him has been accounted and furnished to the Election Commission of India, as required under the law. According to him, he is a social worker and running several educational institutions imparting education to the students and that he was also a member of Parliament and Legislative Assembly. Therefore, he requested this court to dismiss the petition.

5. Based on the above pleadings, this court framed the following issues on 25.1.2005 in the open court:-

1) Whether the petitioner proves that his nomination was improperly rejected?
2) Whether the petition filed by the petitioner is in accordance with Sec.83 of Representation of People Act, 1951?
3) Whether the petitioner proves that R-1 committed corrupt practice in the elections?
4) What order?

Thereafter the parties were directed to file list of witnesses and to pay process fee and travelling allowance within 7 days from 25.1.2005 and the case was adjourned from 25.1.05 to 3.2.2005. Either the petitioner of the respondent did not file the list of witnesses as required under the law. On 3.2.2005, since the petitioner was not present, case was posted for evidence to 10.2.2005. On 10.2.2005, the petitioner was not present and the petitioner's counsel submitted that in spite of his best efforts, he could not contact the petitioner and that the petitioner has not turned up to give instructions after institution of the petition. In these circumstances, adjourned the case to today. Even today also, learned counsel for the petitioner submits that he tried to contract the petitioner through his brother, who is also a practicing advocate in Davanagere, he is unable to secure the petitioner and proceed with the case on merits and he expressed his inability to proceed with the case.

6. Considering the conduct of the petitioner, as the petitioner's counsel is unable to contact the petitioner to let in evidence, this court has to proceed with the matter in the absence of the evidence of the petitioner.

7. At this juncture, learned counsel for the respondents' submits that he is also not inclined to lead any evidence, as issues are to be proved by the petitioner and that the petitioner has not proved the issues levelled against him. Therefore, he submits that he has no oral evidence to let in. In this background, this court has to dispose of the election petition without recording the evidence of the parties.

9. Though the documents are not marked no oral evidence is let in by the parties. From the documents produced by the petitioner, it is clear that he is not a sponsored candidature of Indian National Congress. It is also not in dispute that if a recognized party sponsors a candidate, he is required to furnish Forms A and B issued by the party along with the nomination papers. In the instant case, the petitioner has not produced Forms A and B furnished by the 1st respondent as the official candidate of Indian Congress Party. Therefore, this court is of the opinion that the Returning Officer is notified in rejecting the nomination of the petitioner, as not a candidate of All India National Congress Party.

9. Then the next question to be considered by this court is; whether the nomination of the petitioner could have been accepted treating him as an independent candidate. As per Annexure-E of the Election Petition, the Returning Officer has categorically stated that in order to consider the petitioner as an independent candidate, his nomination should have contained 10 proposers, but the nomination paper of the petitioner has contained the signature of 10 proposers. Similarly, the affidavit was not filed by the petitioner on the required stamp paper. These facts are not in dispute. Therefore, the petitioner could not have been considered as an independent candidate by the Returning Officer.

10. In regard to the allegations of corrupt practice of the 1st respondent, the petitioner has not placed any material before the court to hold that the 1st respondent has spent more than a sum of Rs.5.00 crores for distribution of liquors to the voters. In the absence of evidence, this court cannot hold that the 1st respondent has committed corrupt practice.

11. In view of my findings on the above issues, this court is of the opinion that the petition filed by the petitioner has to be dismissed.

12. Accordingly, the petition is dismissed on merits without costs.

By Order,

P.R. 161

TAPAS KUMAR

Secretary.